MAH WAH YEOW v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) October 4, 1960]

[Penang — Criminal Appeal No. 28 of 1960]

Road Traffic — Licensing — Using vehicle for purposes other than it was licensed — Third party insurance — Road Traffic Ordinance, 1958, ss.22(2) and 74.

This was an appeal from the decision of the learned Magistrate sitting at Bukit Mertajam whereby the appellant was convicted of (1) using his motor-car for a purpose other than the purpose for which a licence was granted contrary to section 22(2) of the Road Traffic Ordinance, 1958 to wit carrying pineapples and window chicks and (2) for using the vehicle without a policy of insurance in respect of 3rd party risks contrary to section 74 of the same Ordinance.

Held: there was no sufficient evidence to establish that the articles found in the car were being carried for the purpose of any trade or business.

Observations on the Road Traffic Ordinance as stated in *Chua Lai Seng* v. *Public Prosecutor* (1) reiterated.

Case referred to:—

(1) *Chua Lai Seng* v. *Public Prosecutor* [1961] M.L.J. 144.

CRIMINAL APPEAL.

David Choong for the appellant.

L. A. Massie (Deputy Public Prosecutor) for the respondent.

Rigby J.: This was an appeal from a decision of the learned Magistrate, sitting at Bukit Mertajam, whereby the appellant was convicted of using his motor car for a purpose other than the purpose for which the licence was granted, contrary to the provisions of section 22(2) of the Road Traffic Ordinance, 1958. He was further convicted upon a second charge of using the vehicle in circumstances in which there was not in force, in relation to the use of the said motor vehicle, a policy of insurance in respect of third party risks, contrary to the provisions of section 74 of the Road Traffic Ordinance. The nature of the second charge, and the conviction thereon, arose really as a direct result of the commission of the offence in respect of the first charge.

The facts were not in dispute. Shortly after mid-day on the 26th May, 1960, the appellant's motor vehicle was stopped by a police constable in one of the main streets in Bukit Mertajam. The rear seat of the car had been removed and 69 pineapples were found inside the car. The door of the boot of the car was down and 4 rolls of window chicks were protruding from the boot. The car, an Austin A.40, was taxed and licensed as a private motor vehicle, and the vehicle was insured as a private motor vehicle, with the usual limitation that the policy did not cover use "for hire or reward" or "the carriage of goods, other than samples, in connection with any trade or business....."

On that evidence — and I would emphasise on that evidence alone — the appellant was prosecuted on these two charges.

In evidence he said that he was an estate contractor and that he had taken these pineapples — which were small pineapples, "left-overs" and unsaleable — from his brother's house to give to his, the appellant's, labourers. One of the labourers had, in fact, asked him to bring them. This evidence was corroborated. The chicks were for putting up in his own house.

The learned Magistrate apparently convicted the appellant on the sole ground that the articles carried were goods.

"Goods" are defined in section 2 of the Road Traffic Ordinance as "anything carried on or in a motor vehicle for the purposes of any trade or business....." Then follow a number of exceptions which are irrelevant for consideration in this case.

As I have pointed out before(1), the object of this legislation is to prevent persons making use of their private motor vehicles for the carriage of goods, other than samples, in the furtherance of their trade or business. The intention is to prevent the use of private motor vehicles for commercial purposes. Persons who wish to use their vehicles for commercial purposes must take out a carrier's licence under section 98 of the Ordinance for which, of course, they are required to pay not merely a higher road tax fee but also a higher insurance premium. If they fail to comply with the law in this respect and choose to use their privately licensed motor vehicles for the carriage of goods in connection with their trade or business, then they run the risk of prosecution not only for using the vehicle for a purpose which it has not been licensed, but also on the further — and far more serious — charge of using the vehicle when not covered by a third party policy of insurance in relation to its user for that purpose — carrying goods — for which it is then being unlawfully used. A conviction on this later charge involves a mandatory disqualification for a minimum period of twelve months, unless the Court, for special reasons to be specified in the Order, thinks fit to order otherwise.

In this case on the facts before the Court there was, in my view, no evidence — or certainly no sufficient evidence at the close of the case for the prosecution — that the articles found in the car were being carried for the purposes of any trade or business. The appellant, in his own evidence, said the pineapples were a gift for his labourers and the window chicks for his own house.

The learned Deputy Public Prosecutor, in seeking to support the conviction, said that "it could be argued" — those were his own words — that the pineapples formed part of the remuneration for the labourers and, if so, they were being carried "for the purposes of any trade" within the meaning of section 2 of the Ordinance. It may be arguable — and I refrain from expressing any opinion on the point — that if an estate contractor, in part payment of the labourers engaged by him, supplies them with "goods" and,

for the purpose of collecting or delivering the "goods", makes use of his own private vehicle. he is committing an offence under this section. But there was no evidence whatsoever in this case that the pineapples were to be delivered to the labourers in part payment or remuneration for their services. Again, the learned Deputy Public Prosecutor said that it was common knowledge that estate contractors very often ran estate shops, and it might be that the pineapples were intended for sale. Again, there was no evidence whatsoever to support any such suggestion.

It was for these reasons that I allowed this appeal, quashed the conviction and fine, and set aside the order of disqualification.

Appeal allowed.

Solicitors: *Lim, Lim & Oon.*

PUBLIC PROSECUTOR v. NAIKAN

[O.Cr.J. (Ismail Khan J.) November 3, 1960]

[Seremban — Criminal Trial No. 4 of 1960]

Criminal Law and Procedure — Confessions — Admissibility — Whether freely and voluntarily made — Inducement — "Better tell the truth" — Interval between confessions — Whether material.

This case involved the question of the admissibility of two confessions made by the accused — one to the manager of an estate and another to a Magistrate. The main grounds of the defence were that the confessions had been obtained by inducement as the manager had used the words "better tell the truth," and as the interval between the first confession and the second was only two hours (during most of which time the manager was with the accused) the interval was too short for the impression under which the first confession was made to be erased before the second confession was recorded.

Held: (1) there was sufficient inducement to deprive the confession of its voluntary character since the manager in relation to the accused was a person of authority. The words "you better tell the truth" and equivalent expressions have acquired a fixed meaning as if a technical term and have always been held to import a threat or promise;

(2) the two hours' interval between the confessions is too short to have removed the influence he was under at the time he made his confession in the circumstances of this case.

Cases referred to:—

(1) *R.* v. *Doherty* (1874-77) 13 Cox C.C. 23, 24.

(2) *Abdullah bin Awang Bongkok* v. *Public Prosecutor* [1956] M.L.J. 90, 91.

(3) *R.* v. *Sherrington* (1838) 2 Lewin C.C. 123.

RULING ON ADMISSIBILITY OF CONFESSIONS.

Wan Suleiman bin Pawan Teh (Deputy Public Prosecutor) for the *Public Prosecutor.*

Edgar Joseph Jr. for the accused.

Ismail Khan J.: The prosecution sought to bring in evidence two confessions made by the accused, firstly, to the Manager of Sungei Mahang Estate, Mr. Maw, at his office and, secondly, to the Magistrate, Seremban, Mr. Tan Chin Beng, at the Magistrate's Court, both on the same day, 4th March, 1960.

The defence objects to the admissibility of the confessions on the ground that they were obtained by inducement, the inducement complained of being the promise of help by Mr. Maw, P.W.1, to the accused.

The facts are that on 9th February, 1960, the accused who was working in the Kubang Division of Sungei Mahang Estate was arrested and detained at the police station, Mantin, for two weeks, at the end of which period he was released. He was rearrested on 4th March, 1960. On that day, before his rearrest, the accused saw P.W.1 at his office and told him that he (the accused) was in difficulties and wanted help. According to P.W.1 his interview with the accused was in the form of question and answer and that it took about three-quarters of an hour. P.W.1 said that he suggested by his manner that the accused should answer his questions truthfully and that he gave the accused the impression that he would help him to the best of his ability. The accused then admitted that he had shot the woman mistaking her for a pig. He also said that he had dug a pit and shot the woman. P.W.1 admitted that it was possible that he could have exhorted the accused to speak the truth and that he could have used the words "better tell the truth". He could not say at what stage of the interview he had used those words and therefore the possibility that they were mentioned at the beginning of the interview cannot be ruled out. He also said in answer to the Court that in his interview with labourers on the estate it was his practice to urge them to speak the truth.

The words "you had better tell the truth" and equivalent expressions have acquired a fixed meaning as if a technical term, and have always been held to import a threat or promise. See *Woodroffe and Ameer Ali on Evidence,* (9th Edn.), pages, 283 — 284.

It is not in dispute that P.W.1 is in relation to the accused a person of authority. I am therefore satisfied that there was sufficient inducement to deprive the confession of the accused to P.W.1 of its voluntary character so as to render it inadmissible in evidence.

With regard to the second confession, that is, to the Magistrate, Mr. Tan Chin Beng, P.W.3, it is contended by Mr. Joseph for the defence that the inducement which had led to the first confession continued to operate upon the mind of the accused throughout the time when he made the second confession. He argued that the interval between the two confessions was only a matter of two hours for the most part of which period P.W.1 was with the accused, and that the interval was too short for the impression under which the first confession was made to be